# BEFORE THE MEDICAL BOARD OF CALIFORNIA DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA

) ) )
) Case No. 800-2015-012971
) OAH No. 2016100890
)
)

## **DECISION**

The attached Proposed Decision is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on April 14, 2017.

IT IS SO ORDERED March 16, 2017.

MEDICAL BOARD OF CALIFORNIA

Jamjé Wright, J**B**, Chair

Panel A

# BEFORE THE MEDICAL BOARD OF CALIFORNIA STATE OF CALIFORNIA

In the Matter of the Accusation Against:

Case No. 800-2015-012971

SAMANTHA KAY HONNER, M.D.

OAH No. 2016100890

Physician's and Surgeon's Certificate No. A93611

Respondent.

#### PROPOSED DECISION

Administrative Law Judge Mary-Margaret Anderson, State of California, Office of Administrative Hearings, heard this matter on January 25, 2017, in Oakland, California.

Deputy Attorney General Joshua M. Templet represented Complainant Kimberly Kirchmeyer, Executive Director of the Medical Board of California.

Stephen Boreman, Attorney at Law, represented Respondent Samantha Kay Honner, M.D., who was present.

The record closed on January 25, 2017.

## FACTUAL FINDINGS

- 1. On December 21, 2005, the Medical Board of California (Board) issued Physician's and Surgeon's Certificate No. A93611 to Samantha Kay Honner, M.D. (Respondent). Respondent's certificate will expire on June 30, 2017, unless renewed.
- 2. On September 27, 2016, Complainant Kimberly Kirchmeyer, acting in her official capacity, issued an Accusation against Respondent. Respondent filed a Notice of Defense and this hearing followed.
- 3. The Accusation alleges cause for license discipline for unprofessional conduct based upon Respondent's conviction for driving under the influence of alcohol and dangerous use of alcohol in conjunction with the conviction.

4. The standard of proof applied in making the factual findings set forth below is clear and convincing evidence to a reasonable certainty.

## Background

5. Respondent graduated from the University of California San Francisco Medical School in 2004 and completed a residency in emergency medicine at Alameda County Medical Center in 2008. She is board certified in emergency medicine and currently employed by Berkeley Emergency Medical Group. She works in the Emergency Department at the Summit Alta Bates hospitals in Berkeley and Oakland.

#### Arrest and criminal conviction

6. On December 14, 2014, a Friday, Respondent was on vacation and had no professional responsibilities. Respondent and her husband, Brian Scott, took friend Melissa Chancellor to a restaurant on Grand Avenue in Oakland to celebrate Chancellor's birthday. It was prearranged that Scott was the "designated driver" for the evening. After dinner and sharing a bottle of wine, the three walked across the street to a different restaurant that had been engaged for a private party. They were invited to join in. Chancellor went home after a few minutes. Respondent was provided with two alcoholic drinks. She became upset while watching Scott dancing with another woman, and asked him to take her home, but he refused, stating that he wished to stay. She was extremely upset because Scott had recently had an affair with a friend of hers. The couple was in counseling and attempting to save their relationship, and she was afraid that Scott's behavior meant that he would have another affair. Respondent had a set of car keys and decided to drive herself to their home in Montclair, approximately four miles from the restaurant. In her words, she "panicked and drove off," thinking her marriage was over. She was emotionally distraught.

Approximately halfway home, Respondent missed a turn, causing her to be concerned that she should not be driving. She decided to look for a place to pull off the road, and stopped eventually on Pacific Avenue in Piedmont, away from the direct route to her house. It was dark and raining. Respondent thought that she was next to an apartment building, but it was a neighborhood of single-family homes. When she turned off the engine, she heard and saw water rushing by and that her car was stuck in mud. Respondent got out of her car. She tried to call Scott, but he did not answer the phone. Respondent felt ill and vomited.

- 7. At approximately 11:18 p.m., a resident of Pacific Avenue called the police and reported a possible water main break that might have been caused by a drunk driver. He also said that he had spoken with a female and that she looked "wasted."
- 8. Responding police officers reported that Respondent's car was "stuck on a bed of mud in between two driveways. . . . There was a large amount of water flowing and it appeared the Volkswagen had hit a water main." Photographs of the scene taken by police

are very dark, but clearly show Respondent's car parked above a curb with the front wheels sunk into the ground approximately six inches up to the rim.<sup>1</sup>

One officer wrote that he observed Respondent to have "slurred speech, bloodshot eyes, unsteady gait and a strong smell of alcohol . . . emanating from her person. [Respondent] had trouble standing and I saw she had vomited on herself."

- 9. The police report states that Respondent refused to submit to a field sobriety test or a breath test at the scene. She was nonetheless arrested and at the police station asked if she would submit to a chemical test. The report states that Respondent refused the test and was read the chemical test refusal information, but again refused. A search warrant was obtained for a blood draw; a phlebotomist arrived and drew blood. Respondent was served with a DMV suspension form as the result of her refusal and her driver's license was suspended for one year.
- 10. A Toxicology Report dated December 19, 2014, revealed a blood alcohol content of 0.20 percent. A Criminal Complaint was filed against Respondent on January 29, 2015, that charges two counts of DUI Vehicle Code violations, each enhanced with charges of excessive blood alcohol (.15 percent or more the complaint states "Blood: .16") and with refusing a chemical test in violation of Vehicle Code section 23577. The record does not reveal whether the different test result was the result of additional testing or a clerical error.
- 11. On April 22, 2015, Respondent was convicted, by her plea of no contest, of Count Two of the Complaint, a misdemeanor violation of Vehicle Code section 23152, subdivision (b), driving with a blood alcohol level above .08 percent.

Respondent received a conditional sentence of 36 months summary probation on conditions that included serving 15 days in jail (or Weekend Work Program), completing the three-month DUI school, using an interlock ignition device for five months, and paying fines and fees. She asserted during her Board interview that she was in complete compliance with probation, and there was no contrary evidence.

#### Respondent's evidence

12. Paul Abramson, M.D., is board certified in family medicine and in addiction medicine. He has conducted numerous evaluations for professional boards and government agencies in the past 10 years. On August 17, 2016, Dr. Abramson conducted a medical, mental health and substance abuse evaluation of Respondent at her request. He believes that in conducting the evaluation, he had a dual role; he was working for Respondent but he also has a duty to protect the public. Dr. Abramson read the criminal records and other pertinent documents and interviewed respondent. He arranged for psychologist Jennifer Banta, Ph.D.,

<sup>&</sup>lt;sup>1</sup> Respondent took her car to a previously scheduled service appointment the day following the incident. The records do not show that the car was damaged in any respect. There is also no evidence in the record of a broken water main.

to conduct a comprehensive psychosocial and behavioral evaluation of Respondent, and provide an assessment and recommendations based upon the evaluation. Dr. Abramson authored a report of his findings and opinions dated August 26, 2016, and testified at hearing.

Dr. Abramson found no identified substance use disorder or other mental health diagnosis. His written report concludes:

- From my history and review of documentation today, the single DUI arrest appears to have been an isolated incident and not indicative of a larger substance use or mental health problem.
- [Respondent] does not meet criteria for substance or alcohol dependence (DSM IV), or substance or alcohol use disorder (DSM-V)
- My assessment is that [Respondent's] risk of future problems related to substance or alcohol use is extremely low.
- I do not feel that she needs any further counseling or other treatment. I do not feel that she needs any monitoring or testing in future. I do not recommend any restrictions in the work environment.
- [Respondent's] prognosis is excellent, and no specific treatment based on this evaluation is recommended. In particular I do NOT recommend participation in a treatment/rehabilitation program for chemical dependence, a required abstinence from psychotropic drugs including alcohol, random drug or alcohol screening, or therapy or counseling.
- I believe she can perform the functions of her occupation without restriction, in a safe and competent manner.

Dr. Abramson found Respondent to be sincere when she related that she chose to use the experience as a learning opportunity to gain insight. She evidenced introspection with the goal to remedy anything in her life that could cause her to repeat the behavior. He concluded that Respondent is able to practice safely without restrictions. Dr. Abramson's opinions were persuasive.

13. Steve Sornsin, M.D., is board certified in emergency medicine, the President of Berkeley Emergency Medical Group, Inc., and Respondent's employer. He wrote a letter of support and testified at hearing. Dr. Sornsin hired Respondent in 2008 and works closely with her at Alta Bates Summit. He learned of Respondent's arrest when she told him about it

shortly after it occurred. He describes the conviction as a serious offense, but believes that it was an isolated incident based upon his observations of Respondent's practice and conduct.

14. Dr. Sornsin described work in the Emergency Department as akin to practicing in a fishbowl. The work of the emergency room physicians is closely observed by many other health professionals and staff. He described Respondent as "one of our best and most trusted physicians." He wrote

[Respondent] provides outstanding, compassionate and comprehensive medical care for all of her patients. She possesses exceptional interpersonal skills; values and always seeks input from our nurses, ED staff and consultants, and embodies the 'team approach to EM' to provide the best possible care for her patients. She concisely advocates for her patients and their needs. Her clinical and procedural skills, ability to work through a differential diagnosis and medical decision-making are superior. Her charting and documentation are always excellent and completed in a timely manner. She is a cautious clinician, exercises sound medical judgement . . . and is expert at facilitating the over-all flow and efficiency of the E.D.

[Respondent] often arrives early for her shifts, always with a positive attitude and works extraordinarily hard. She stays late whenever necessary and seeks to minimize patient turnovers. [Respondent] has the fairly unique distinction of having never been late for a shift, and having never called in sick for a shift since joining our group in 2008!

- 15. Dr. Sornsin testified that Respondent "has been distraught and upset" regarding her arrest, and has "beat up on herself plenty." He has observed her seek to learn from the experience and become more introspective. Dr. Sornsin has never seen Respondent use alcohol to excess or be impaired at work. He did not place restrictions on Respondent's practice or monitor her. Although he would seek to comply with any probation order, he does not believe monitoring is necessary and that to restrict her practice would be excessively punitive.
- 16. Rebeka Barth, M.D., is a partner with Respondent at Berkeley Emergency Medical Group and has known Respondent since 2004. Dr. Barth wrote a letter supporting Respondent dated January 2, 2017. She wrote in part:

I believe this DUI represents a unique lapse of judgment for [Respondent], in a moment of personal crisis, and in no way does it reflect a pattern of behavior. I have never witnessed a similar lapse of judgement on her part in her personal life or professional setting. Her Hippocratic oath is a part of her core

identity that I am certain she would never violate. We have spent a lot of time together outside of work, I have only ever witnessed her drink alcohol responsibly and in moderation.

Personally, I have seen the huge toll this has taken on her, the remorse she feels for her mistake, and the overwhelming desire to make it right. She has done much self-examination, therapy and meditation in addition to her court-mandated class in order to ensure that she understands how and why this happened so that it will not occur again. She has reduced her drinking to a minimum and has challenged herself by riding her bike 10 miles to work every day, rain or shine, morning or night. Her ethics, morals, and integrity, continue to impress me and I would choose her as a physician to treat my family or myself at every opportunity.

17. Melissa Chancellor is a physician's assistant and close friend of Respondent's. She wrote a supportive letter dated March 9, 2016, and testified at hearing in support. Chancellor has known Respondent for eight years; they formerly worked together.

The night of the incident, Respondent, Scott, and Chancellor were together for dinner. Chancellor drove home shortly afterwards, noting that Scott would be driving the couple home. They shared one bottle of wine with dinner. Chancellor wrote:

That evening [Respondent] made a misjudgment when she drove herself home. I believe her decision was clouded by a fight or flight response. She recently discovered her husband in a particularly deceitful extra-marital affair with a good friend. The evening she was arrested she felt threatened by her husband's behavior which likely triggered deep, painful feeling, and clouded her judgment. I had to pick her up from the police station as her husband was not answering calls from her or the police after the incident.

In the time since the affair I have seen her battle feelings of rejection, devastation, depression, humiliation, and despair. She has never missed work; she has never rejected the opportunity to help others, including myself; she had the strength to forgive her husband; she had sought counselling and mediation, and she has made peace with herself and her future. Even if it means her husband may not be part of it. Never have I seen her behave poorly or irresponsibly.

18. Chancellor testified that she has never seen Respondent abuse or excessively drink alcohol. They have spent considerable time together, including traveling abroad for

many weeks. Chancellor believes that the way Respondent has handled this situation shows that her character is stellar.

19. Brian Scott, Respondent's husband, wrote a letter dated March 10, 2016, and testified at hearing. The couple met in 1993 in Australia and they were married a year later. After Respondent completed her residency, Scott went back to school and became a paramedic. During a period when he felt he lacked direction, Scott had an affair, but subsequently resumed his relationship with Respondent. They began to see a therapist. Shortly thereafter, Respondent was arrested for DUI.

When Respondent asked him if they could leave on the night of the incident, he was dancing with another woman. He told her he would prefer to stay "and she ran out." Scott is remorseful and expressed embarrassment "for putting her in this position," which he described as very out of character.

#### 20. Scott wrote:

While [Respondent] and I have had marital difficulties, she is a woman of great integrity. She has worked hard to achieve her success and provide a high level of care for her patients. [Respondent] has never had any legal trouble, an accident or even a point on her license. I know that this DUI was a momentary lapse in judgment that she will never forget. A lapse that was clouded by the trouble we were having in our marriage. A lapse I also take blame for, as it stemmed from the pain I caused her with the affair. I didn't know how much she was still hurting.

From our trials and tribulations, we have learned a lot about ourselves and each other. While she was only ever a social drinker, [Respondent] now drinks no more than two drinks, so that something like this never happens again. She has managed this period of great stress by meditating daily and riding her bike to every shift . . . . I know [Respondent] won't make the same mistake again. And I will be there for her, no matter what, to ensure this situation never recurs.

21. Respondent submitted to a Board interview, wrote a letter to the Board, and testified at hearing. Her statements were consistent with only minor and understandable deviations and she was a credible witness on her own behalf. The only lack of clarity concerned her consent or refusal to be tested the night of her arrest. It was somewhat troubling, in that it is well known that refusing to be tested for blood alcohol is a separate offense with its own penalty. And given Respondent's training, background and what was evident of her personality, it does not make sense that she would refuse all testing. On the other hand, there is no logical reason for the police to go to the extra trouble to obtain a

search warrant for a blood draw if she had not refused, and the DMV subsequently concluded following a hearing process that she refused. For the above reasons, this conflict in the evidence could not be resolved. Respondent was, however, entirely credible and forthcoming when discussing what led to the offense and in her representations that she would never again drink and drive.

22. A portion of Respondent's Board interview is instructive concerning the soul searching and deliberate steps she has taken to ensure that there will be no recurrence. Respondent described how her life has changed, and she has decided that she will never again drink more than two drinks at a time. The DUI class was particularly impactful as she saw from others the devastating consequences of driving under the influence.

Respondent has taken and continues to take full responsibility for her actions the night of her arrest, despite her lack of intention to drink and drive and the emotional upheaval she was experiencing. Although she previously practiced healthy eating, exercise and sleep habits, she has taken up a meditation practice that she finds very helpful to relieve stress. She and Scott were in marriage counseling for one year, and have established a better communication style and other practices to solidify their marriage.

#### LEGAL CONCLUSIONS

- 1. Business and Professions Code section 2234 provides that unprofessional conduct is grounds for discipline of a physician's certificate. (Bus. & Prof. Code, § 2234, subd. (a).)
- 2. Business and Professions Code section 2239, subdivision (a), makes excessive use of drugs or alcohol unprofessional conduct. Excessive use is described as use

to the extent, or in such a manner as to be dangerous or injurious to the licensee, or to any other person or to the public, or to the extent that such use impairs the ability of the licensee to practice medicine safely or more than one misdemeanor . . . involving the use, consumption or self-administration of any of the substances referred to in this section.

Respondent's use of alcohol on December 14, 2016, endangered herself and others in that she drove while intoxicated to a degree that her driving and her judgment were impaired. The intoxication was evidenced by her admission to drinking wine and mixed drinks, the manner in which she pulled her car off to the side of a city street, the location where she parked the car, physical symptoms, the observations of responding police officers, and blood alcohol testing. Her decision to drive after consuming alcohol placed herself and the public at risk of serious harm. Cause for discipline pursuant to section 2239, subdivision (a), was established.

3. Business and Professions Code section 2236, subdivision (a), provides "the conviction of any offense substantially related to the qualifications, functions, or duties of a physician and surgeon constitutes unprofessional conduct within the meaning of this chapter."

The factual circumstances surrounding Respondent's conviction establish the conviction as one substantially related to her profession as a physician. In *Griffiths v. Superior Court* (2002) 96 Cal.App.4th 757, the court held that section 2239, subdivision (a), establishes a sufficient nexus between alcohol-related misdemeanor convictions and a physician's competence or fitness to practice medicine:

Convictions involving alcohol consumption reflect a lack of sound professional and personal judgment that is relevant to a physician's fitness and competence to practice medicine. Alcohol consumption quickly affects normal driving ability, and driving under the influence of alcohol threatens personal safety and places the safety of the public in jeopardy. It further shows a disregard of medical knowledge concerning the effects of alcohol on vision, reaction time, motor skills, judgment, coordination and memory, and the ability to judge speed, dimensions, and distance. [¶] Driving while under the influence of alcohol also shows an inability or unwillingness to obey the legal prohibition against drinking and driving and constitutes a serious breach of a duty owed to society. . . .

(96 Cal.App.4th at pp. 770-771.)

Cause for license discipline was established under Business and Professions Code section 2236, subdivision (a).

- 4. Cause for discipline having been established, the issue is the extent of discipline that should be imposed. To assist in making this determination, the Board has adopted the Manual of Model Disciplinary Orders and Disciplinary Guidelines (11th ed., 2011), and "Disciplinary Guidelines and Exceptions for Uniform Standards Related to Substance-Abusing Licensees" (Cal. Code Regs., tit. 16, § 1361). Complainant represented that she did not consider Respondent a substance-abusing licensee so as to apply those guidelines. Rather, she argued that the guidelines for one misdemeanor conviction were appropriate, with the additional term of random biological fluid testing. Under the Disciplinary Guidelines, the minimum recommended discipline for a violation of section 2236 is five years' probation with the following conditions: community service, ethics course, psychiatric evaluation, medical evaluation and treatment, and victim restitution. Given the facts in this case, departure from the Board's guidelines is warranted.
- 5. The rationale behind license discipline is protection of the public and rehabilitation of physicians. Respondent asserts that a public reprimand would be appropriate and sufficient to protect the public and rehabilitate Respondent in these

circumstances. Her argument is persuasive. A term of probation is not necessary on these facts, nor is random drug and alcohol screening. As acknowledged by Complainant, the evidence did not demonstrate that Respondent is a "substance-abusing licensee," despite her excessive and dangerous use of alcohol on the night she was arrested. Her behavior was out of character and clearly an aberration in an otherwise law-abiding life. Respondent was honest and forthcoming about her mistake and is very remorseful. She has suffered demonstrable harmful consequences from her error in judgement. The risk of any type of re-offense or harm to patients appears minimal to none. The public will be sufficiently protected by the issuance of a public reprimand.

#### **ORDER**

Physician's and Surgeon's Certificate No. A93611, issued to Samantha Kay Honner, M.D., is publicly reprimanded.

DATED: February 14, 2017

Mary Margaut Andur MARY-MARGARET ANDERSON

Administrative Law Judge

Office of Administrative Hearings

11		1	
1 2 3 4 5 6 7 8	MEDICAL BOARD	FILED STATE OF CALIFORNIA MEDICAL BOARD OF CALIFORNIA SACRAMENTO SEPT. 27, 2016 BY: 2 A A A A A A A A A A A A A A A A A A	
10	STATE OF CALIFORNIA		
11	In the Matter of the Accusation Against:	Case No. 800-2015-012971	
12	Samantha Kay Honner, M.D.	ACCUSATION	
13	Alta Bates Summit Medical Center 2450 Ashby Ave.		
14	Berkeley, CA 94705		
15	Physician's and Surgeon's Certificate No. A93611,		
16	Respondent.		
17			
18	Complainant alleges:		
19	PARTIES		
20	1. Kimberly Kirchmeyer (Complainant) brings this Accusation solely in her official		
21	capacity as the Executive Director of the Medical Board of California, Department of Consumer		
22	Affairs (Board).		
23	2. On December 21, 2005, the Medical Board issued Physician's and Surgeon's		
24	Certificate Number A93611 to Samantha Kay Honner, M.D. (Respondent). The Physician's and		
25	Surgeon's Certificate was in full force and effect at all times relevant to the charges brought herein		
26	and will expire on June 30, 2017, unless renewed.		
27	///		
28	///		
		1	

(SAMANTHA KAY HONNER, M.D.) ACCUSATION NO. 800-2015-012971

#### JURISDICTION

- 3. This Accusation is brought before the Board, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.
- 4. Section 2227 of the Code provides that a licensee who is found guilty under the Medical Practice Act may have his or her license revoked, suspended for a period not to exceed one year, placed on probation and required to pay the costs of probation monitoring, or such other action taken in relation to discipline as the Board deems proper.
  - 5. Section 2234 of the Code, states, in pertinent part:

"The board shall take action against any licensee who is charged with unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

"(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the violation of, or conspiring to violate any provision of this chapter.

.....

6. Section 2236 of the Code, states, in pertinent part:

"The conviction of any offense substantially related to the qualifications, functions, or duties of a physician and surgeon constitutes unprofessional conduct within the meaning of this chapter. The record of conviction shall be conclusive evidence only of the fact that the conviction occurred.

"…"

- 7. Section 2239 of the Code states, in pertinent part:
- "(a) The use or prescribing for or administering to himself or herself, of any controlled substance; or the use of any of the dangerous drugs specified in Section 4022, or of alcoholic beverages, to the extent, or in such a manner as to be dangerous or injurious to the licensee, or to any other person or to the public, or to the extent that such use impairs the ability of the licensee to practice medicine safely . . . constitutes unprofessional conduct. . . . .

"…"

### **FACTS**

- 8. On December 18, 2014, Respondent was arrested for violations of Vehicle Code sections 23152(a) (driving while under the influence of an alcoholic beverage) and (b) (driving with a blood alcohol level of 0.08% or above). Her blood alcohol level was measured as 0.20%.
- 9. On April 22, 2015, Respondent pled no contest to violating Vehicle Code section 23152(b), a misdemeanor, by driving with a blood alcohol level of 0.08% or above on December 18, 2014. She received a conditional sentence of 36 months of summary probation and 15 days in jail which could be served by completing seven and a half days in the Weekend Work Program. In addition, among other things, she was required to complete the three month Driving Under the Influence School, pay fines of \$2240.00, and use an Ignition Interlock Device for five months.

# FIRST CAUSE FOR DISCIPLINE

# (Conviction of Substantially Related Offense)

10. Respondent is subject to disciplinary action under sections 490 and 2236 of the Code in that, as described above, she was convicted in April 2015 of violating Vehicle Code section 23152(b) for driving with a blood alcohol level of 0.08% or higher, a misdemeanor substantially related to the qualifications, functions, and duties of a physician and surgeon.

# SECOND CAUSE FOR DISCIPLINE

# (Unprofessional Conduct, Excessive Use of Alcohol)

11. Respondent Samantha Kay Honner, M.D. is subject to disciplinary action for unprofessional conduct under sections 2234 and/or 2239 of the Code in that she used alcoholic beverages, as described above, to the extent that it was dangerous to herself and others when she drove a car with a blood alcohol level of 0.20%.

#### **PRAYER**

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Medical Board of California issue a decision:

1. Revoking or suspending Physician's and Surgeon's Certificate Number A93611, issued to Samantha Kay Honner, M.D.;